



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

William Lawler, Esq
Vinson & Elkins, LLP
1455 Pennsylvania Avenue, NW, Suite 600
Washington, D C 20004

MAR 13 2008

RE MUR 5504
Christina Ligotti

Dear Mr Lawler

Based on a complaint filed with the Federal Election Commission on August 3, 2004, and information supplied by your client, Christina Ligotti, the Commission, on May 11, 2007, found that there was reason to believe Christina Ligotti violated 2 U S C § 441f, and instituted an investigation of this matter

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred

The Commission may or may not approve the General Counsel's recommendation Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days

You may also request an oral hearing before the Commission See Commission's "Policy Statement Establishing a Pilot Program for Probable Cause Hearings," 72 Fed Reg 7551 (Feb 16, 2007) Hearings are voluntary, and no adverse inference will be drawn by the Commission based on a respondent's decision not to request such a hearing Any request for a hearing must

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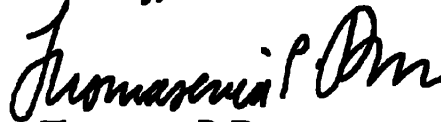
Letter to William Lawler
Page 2

be submitted along with your reply brief and must state with specificity why the hearing is being requested and what issues the respondent expects to address

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement

Should you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1650

Sincerely,



Thomasena P. Duncan
General Counsel

Enclosure
Brief

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1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)

4)
5 Christina Ligotti)

MUR 5504

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8 **GENERAL COUNSEL'S BRIEF**

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10 **I. INTRODUCTION**

11 Complainant, a former employee, alleged that John Karoly, Jr , the President and
12 Treasurer of Karoly Law Offices, P C ("Karoly Law Offices"), caused Karoly Law Offices to
13 reimburse four other employees and their spouses, including paralegal Christina Ligotti and her
14 husband, for \$13,000 in contributions to Gephardt for President ("Gephardt Committee") with
15 the law firm's corporate funds Mr Karoly, representing the four law firm employees and their
16 spouses and himself, responded by submitting identical cursory affidavits from himself and each
17 alleged conduit, which state, in their entirety "My contribution to the Richard Gephardt
18 campaign was not based upon any reimbursement and I received no reimbursement for same "

19 The Federal Election Commission ("Commission") found reason to believe that Christina
20 Ligotti violated 2 U S C §§ 441f by knowingly permitting her name to be used to effect a
21 contribution in the name of another from Karoly Law Offices In response to the reason to
22 believe finding, Ligotti denied the reimbursement by stating that the payment she received from
23 Karoly Law Offices represented a bonus for overtime She also submitted documents in response
24 to a Commission subpoena Upon receiving a deposition subpoena, however, Ms Ligotti
25 asserted her Fifth Amendment privilege and declined to appear for a deposition Our
26 investigation shows that Ligotti was reimbursed \$3,000 for her and her husband's contributions
27 to the Gephardt Committee Based on the information discussed below, this Office is prepared to

1 recommend that the Commission find probable cause to believe that Christina Ligotti violated
2 2 U S C § 441f

3 **II. SUMMARY OF THE RECORD**

4 On September 28, 2003, the same day that other Karoly Law Offices employees and their
5 spouses wrote checks to the Gephardt Committee, Christina Ligotti, wrote a check for \$3,000 to
6 the Gephardt Committee, representing contributions from herself and her husband, Matthew
7 Ligotti.¹ This is the only contribution that the Ligottis have ever made to a federal candidate.²
8 On October 7, 2003, the Ligottis deposited a \$3,000 check from Karoly Law Offices into their
9 bank account

10 In an affidavit dated August 17, 2004, Ms Ligotti denied that she had been reimbursed
11 for her contribution to the Gephardt Committee. This affidavit, submitted when she was still
12 represented by Karoly, was the same one submitted by all of Karoly's then clients Gregory
13 Paglianite, who was employed as a paralegal by Karoly Law Offices in 2003 but has since left
14 that firm, disavowed the affidavit dated August 17, 2004 submitted in response to the complaint
15 and has admitted in a more recent affidavit that he was solicited by Karoly to contribute to the

¹ Ms Ligotti's net pay in 2003 from Karoly Law Offices was \$32,433

² In March 2007, Ms Ligotti's counsel stated that the Gephardt Committee informed her that her \$3,000 contribution in 2003 was excessive and that the Gephardt Committee unilaterally allocated \$1,500 of the total contribution in her name to her husband without notifying her at the time of the allocation. In June 2007, Ms Ligotti received a refund check for \$1,500 from the Gephardt Committee. Ms Ligotti's counsel stated that Mr Ligotti was not a contributor to the Gephardt Committee. However, based upon the timing of this refund, it appears that Ms Ligotti made contact with the Gephardt Committee in 2007 regarding her contribution in response to this matter. In September 2003, the contribution limit was \$2,000 for the primary election and the Gephardt Committee properly allocated this \$3,000 contribution to Christina Ligotti and Matthew Ligotti for \$1,500 each.

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1 Gephardt Committee, with the promise of reimbursement See Paglianite affidavit dated June 27,
2 2006 at p 1 Paglianite wrote a check for \$4,000 dated September 28, 2003 to the Gephardt
3 Committee, the only federal contribution ever made by Paglianite or his spouse Subsequently,
4 Karoly requested Jayann Brantley, who handled financial matters at the firm, to bring him cash
5 *Id* After Brantley brought cash to Karoly, Karoly reimbursed Paglianite for his and his wife's
6 contributions of \$4,000 to the Gephardt Committee Paglianite deposited the \$4,000 in cash into
7 his personal bank account on October 7, 2003 *Id* ³

8 In response to the reason to believe finding, Ligotti stated through new counsel that
9 Karoly Law Offices gave Christina Ligotti a check dated October 6, 2003 in the amount of
10 \$3,000 with the "pay to the order of" line of the check left blank ⁴ The memo line of the check
11 states "Hirko Bonus" ⁵ When Ms Ligotti received this check, she had been employed with the
12 firm less than four months, having been hired in June 2003 The law firm's payroll records do
13 not reflect this \$3,000 check as regular pay, overtime pay, or as a bonus to Christina Ligotti
14 Since a bonus is considered income, this payment should be reflected on the law firm's payroll

³ On October 7, 2003, the same day the Karoly Law Offices cashed a \$12,000 check, Gregory Paglianite deposited his \$4,000 cash reimbursement into his bank account, and the Ligottis deposited a \$3,000 check from Karoly Law Offices in their bank account, another Karoly Law Offices employee who, with her husband, had contributed \$4,000 to the Gephardt Committee, made a \$4,000 cash deposit to their bank account Another law firm employee who contributed to the Gephardt Committee made a large cash deposit into her bank account on October 27, 2003

⁴ Ms Ligotti's counsel states that Ligotti's husband, Matthew Ligotti, took the check to the bank, filled his name on "pay to the order of" line instead of writing "cash" on that line, and deposited the check into their joint checking account This check is inconsistent with other salary and overtime payments that Ms Ligotti received from Karoly Law Offices, which always included her name in the pay to the order line of the checks Ms Ligotti has given no reason for the law firm's departure from its typical practice in filling out this \$3,000 check

⁵ The Hirko case was a major litigation matter in which Karoly Law Offices served as plaintiff's counsel Ms Ligotti's counsel states that this payment represented a bonus for her overtime on the Hirko case

1 records Ms Ligotti never received any other payment called a "bonus" nor, from the evidence
2 we obtained concerning the relevant time-period, did other Karoly Law Offices employees

3 On September 18, 2006, we sent Ligotti a deposition subpoena to appear for testimony,
4 her appearance was postponed by mutual agreement. Subsequently, she declined to appear and
5 asserted her Fifth Amendment privilege against self-incrimination. See letter from Ligotti's
6 counsel to the Commission dated June 7, 2007. Karoly, as well as two other law firm employees
7 who contributed to Gephardt's campaign and deposited commensurate funds into their accounts
8 on October 7, 2003 and October 27, 2003, also asserted their Fifth Amendment privileges, and
9 declined to appear for depositions pursuant to Commission subpoenas.

10 **III. ANALYSIS**

11 No person shall make a contribution in the name of another person or knowingly permit
12 his or her name to be used to effect such a contribution. 2 U S C § 441f. The evidence shows
13 that Christina Ligotti allowed her name to be used to effect a contribution in the name of another
14 by being reimbursed for contributions to the Gephardt Committee in violation of
15 2 U S C § 441f.

16 In this matter, the evidence is sufficient to support a probable cause finding that Christina
17 Ligotti violated 2 U S C § 441f. Shortly after making their first ever contributions to a federal
18 candidate, the Ligottis deposited a \$3,000 check from Karoly Law Offices that cannot be traced
19 to the law firm's payroll records to regular pay, overtime pay or bonuses. This evidence is
20 corroborated by Pagliante's disavowal of his initial affidavit, identical to Ligotti's, and his
21 admission in a more recent sworn affidavit that he was reimbursed for federal contributions by

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1 Karoly Law Offices at Karoly's behest The evidence also includes Paghanite depositing \$4,000
2 in cash into his bank account on October 7, 2003, the same day that the law firm cashed a
3 \$12,000 check, and by other Karoly Law Offices' employees that contributed to the Gephardt
4 Committee depositing commensurate funds into their bank accounts on October 7 and 27, 2003⁶

5 The Commission is entitled to draw an adverse inference from Ligotti's refusal to testify
6 at a subpoenaed deposition The adverse inference rule provides that "when a party has relevant
7 evidence within his control which he fails to produce, that failure gives rise to an inference that
8 the evidence is unfavorable to him " *International Union (UAW) v NLRB*, 459 F 2d 1329, 1336
9 (D C Cir 1972), *see also, Arvin-Edison Water Storage Dist v Hodel*, 610 F Supp 1206, 1218
10 n 41 (D D C 1985) The theory underlying this rule is that, all things being equal, "a party will
11 of his own volition introduce the strongest evidence available to prove his case " *International*
12 *Union (UAW)*, 459 F 2d at 1338 Conversely, if the party fails to introduce such evidence, it may
13 be inferred that the evidence was withheld because it contravened the position of the party
14 suppressing it *Id* Thus, when a party unreasonably resists a subpoena for relevant testimony or
15 documents, it can be inferred that the refusal to comply with the subpoena indicates that the

⁶ Written representations by counsel for Ligotti that her deposit did not represent reimbursement and her affidavit should be regarded in the context of her decision not to testify She was aware that this Office had obtained information that contradicted, or at least called into serious question, those submissions, and therefore sought to depose her in order to elicit sworn testimony that was subject to cross-examination, follow-up, and clarification Because she chose to invoke the Fifth Amendment or otherwise declined to appear, that opportunity was lost For these types of reasons, federal courts have upheld a district court's power to strike or disregard testimony, live or in the form of an affidavit, from witnesses who assert the Fifth Amendment and refuse to answer the government's deposition testimony in order to shield their testimony from scrutiny *See, e.g. U S v Parcels of Land*, 903 F 2d 36 (1st Cir 1990), *Lawson v Murray*, 837 F 2d 653, 656 (4th Cir), *cert denied*, 488 U S 831 (1988) (To allow a witness to testify and then assert the Fifth Amendment to escape scrutiny would be "a positive invitation to mutilate the truth ") Although this Office is not suggesting following such precedent to strike her affidavit or written submissions in this matter, the Commission should give little or no weight to them

evidence or testimony would be adverse to the party's position *See id* at 1338-39 Moreover, an administrative agency need not seek enforcement of the subpoena in court before drawing an adverse inference from the resisting party's failure to comply with it *Id*

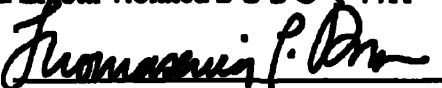
Invoking the Fifth Amendment does not preclude drawing an adverse inference against a party in a civil action who refuses to testify in response to probative evidence offered against him *Baxter v Palmigiano*, 425 U S 308, 318 (1976), *see also*, *SEC v International Loan Network, Inc*, 770 F Supp 678, 695-96 (D D C 1991), *aff'd*, 968 F 2d 1304 (D C Cir 1992) (court may draw adverse inference from party's refusal to testify based on Fifth Amendment), *Pagel, Inc v SEC*, 803 F 2d 942, 946-47 (8th Cir 1986) (agency did not err in taking into account adverse inference based on broker-dealer's invocation of Fifth Amendment privilege against self-incrimination), *Cerrone v Shalala*, 3 F Supp 2d 1174, 1175 n 3, 1180 (D Colo 1998) (agency's finding, based in part on adverse inference drawn against disability benefit recipient who invoked Fifth Amendment, was supported by substantial evidence)


Based on all the reasons stated, the Office of General Counsel is prepared to recommend that the Commission find probable cause to believe Christina Ligotti violated 2 U S C § 441f

IV. GENERAL COUNSEL'S RECOMMENDATION

1 Find probable cause to believe that Christina Ligotti violated 2 U S C § 441f

3/11/2008
Date


Thomasenia P Duncan
General Counsel


Mark D Shonkwiler
Acting Deputy Associate General Counsel
For Enforcement

MUR 5504
General Counsel's Brief
Christina Ligott

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